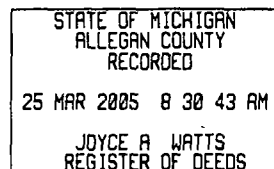




LIBER 2811

PAGE 584

37
4
10

REC'D MAR 23 2005

DECLARATION OF RESTRICTIVE COVENANTS AND ENVIRONMENTAL PROTECTION EASEMENT

MDEQ Reference No.: RC-RRD-03-052

U.S. EPA Site No.: 059B

This Declaration of Restrictive Covenants and Environmental Protection Easement is made by and between **Plainwell Inc.**, a Delaware Corporation, Grantor; the **Michigan Department of Environmental Quality** ("MDEQ" or "Grantee"), having an address c/o Director, Michigan Department of Environmental Quality, P.O. Box 30473, Lansing, Michigan 48909-7973, Grantee, and the **United States of America** and its assigns ("Third Party Beneficiary"), having an address c/o the United States Environmental Protection Agency ("U.S. EPA"), Attn: Director, Superfund Division, Region 5, 77 W. Jackson Blvd. SR-6J, Chicago, Illinois 60604.

This Declaration of Restrictive Covenants and Environmental Protection Easement has been recorded with the Allegan County Register of Deeds for the purpose of protecting public health, safety, and welfare, and the environment by: (1) granting a right of access to the U.S. EPA and MDEQ and their authorized representatives to monitor and conduct Response Activities, as that term is defined below; and (2) restricting unacceptable exposures to hazardous substances located on the 12th Street Landfill property, as legally described on Exhibit 1 hereto ("Property"); (3) assuring that the use of Property is consistent with the exposure assumptions and control measures required pursuant to the Record of Decision ("ROD") issued by MDEQ and concurred with by the U.S. EPA on September 28, 2001 pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* ("CERCLA"); and (4) preventing damage or disturbance of any element of the remedial action constructed on the Property.

The Property is part of the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site (the "Site"). The Site was placed on the National Priorities List on August 30, 1990, and is a facility, as that term is defined in Section 101(9) of CERCLA and Section 201(0) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.20101(0) *et seq.* ("NREPA"). The Property comprises a portion of the 12th Street Operable Unit #4 of the Site for which on-going remedial actions are being conducted in accordance with the ROD. Information pertaining to the environmental conditions at the Property and the remedial actions to be undertaken at the Property is on file with the U.S. EPA and the MDEQ,

REC'D MAR 24 2005

Jody F. King & Kohn Inc. UPS - Stricker



Remediation and Redevelopment Division.

The restrictions contained in this Declaration of Restrictive Covenants and Environmental Protection Easement are based upon information available to the U.S. EPA and MDEQ at the time the ROD was issued. Failure of the remedial action to achieve and maintain the criteria, exposure controls, and requirements specified in the ROD; future changes in the environmental condition of the Property or changes in the cleanup criteria developed under CERCLA and the NREPA; the discovery of environmental conditions at the Property that were not accounted for in the ROD; or use of the Property in a manner inconsistent with the restrictions described herein, may result in this Declaration of Restrictive Covenants and Environmental Protection Easement not being protective of public health, safety, and welfare, and the environment.

Property Identification Number: 0317-024-047-00

Exhibit 2 provides a survey of the Property that is subject to the land use or resource use restrictions specified herein.

Summary of Response Activities

The Property was historically used as a landfill for wastes and residuals associated with the manufacturing and recycling of paper. Between 1993 and 1997 Plainwell Inc. conducted a remedial investigation and feasibility study regarding the nature and extent of contamination at the Property. Remedial activities required by the ROD to assure the protection of public health, safety and welfare, and the environment and ensure the integrity of the remedy include, but are not necessarily limited to: the construction of a landfill cap and containment systems to contain paper residuals and soils and sediments contaminated with polychlorinated biphenyls ("PCBs") and prevent the erosion of PCB contaminated materials into the Kalamazoo River, construction and maintenance of a fence; construction, operation and maintenance of groundwater monitoring system; and establishment of the land use and resource use restrictions contained herein.

Definitions

"MDEQ" means the Michigan Department of Environmental Quality, its successor entities, and those persons or entities acting on its behalf.

"Owner" means, at any given time, the then current title holder of the Property or any portion thereof.

"Owners Subsequent to Plainwell" means, at any given time, the then current title holder of the Property or any portion thereof except for Plainwell Inc.

"Plainwell" shall mean Plainwell Inc., the owner of the Property as of the date of the execution of this Declaration of Restrictive Covenants and Environmental Protection Easement, and the Owner for as long as Plainwell Inc. is a current title holder of the Property or any portion thereof.

"Response Activities" shall mean, consistent with Section 101(25) of CERCLA, such actions



as have been or may be necessary to conduct any removal, remedy or remedial action, as those terms are defined in Sections 101(23) and 101(24) of CERCLA, at the Property and/or at the Site, including enforcement activities related thereto.

"U.S. EPA" shall mean the United States Environmental Protection Agency, its successor entities and those persons or entities acting on its behalf.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 201 of the NREPA; or the Part 201 Administrative Rules ("Part 201 Rules"), 1990 AACRS R 299.5101 et seq., shall have the same meaning in this document as in Parts 3 and 201 of the NREPA and the Part 201 Rules, as of the date of filing of this Declaration of Restrictive Covenants and Environmental Protection Easement.

NOW THEREFORE,

Grantor, on behalf of itself, its successors and assigns, in consideration of the terms of the Settlement Agreement in the jointly administered cases in the United States District Court for the District of Delaware: In re: Plainwell, Inc., et al., Case No. 00-4350 (JWV), and Weyerhaeuser v. Plainwell, Inc. and Plainwell Holding Company, Case No. 04-CV-16 (KAJ), covenants and declares that the Property shall be subject to the restrictions on use set forth below, and conveys and warrants to the Grantee, and its assigns and to the United States of America, and its assigns, as Third Party Beneficiary: 1) an environmental protection easement, the nature, character, and purposes for which are set forth herein; and 2) the right to enforce said use restrictions.

Declaration of Land Use or Resource Use Restrictions

1. The Owner shall prohibit all uses of the Property that are not compatible with the Property's zoned industrial land use designation, the limited industrial land use category under Section 20120a(1)(i) of the NREPA or other use that is consistent with the assumptions and basis for the cleanup criteria developed pursuant to Section 20120a(1)(i) of the NREPA. Cleanup criteria for land use-based Response Activities are located in the Government Documents Section of the State of Michigan Library.

2. The Owner shall prohibit use of the Property or portions thereof, for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation;
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children,
- (e) Any purpose involving residential occupancy on a 24-hour basis.



(f) Any other use that would disturb or penetrate the landfill cover or erosion control system as set forth in the ROD.

3. Owners Subsequent to Plainwell shall prohibit activities, and Plainwell shall not perform any activities, on the Property that may result in exposures above levels established in the ROD. These prohibited activities include:

(a) Any excavation, drilling, penetration or other disturbance of the surface or subsurface soils on the Property except as necessitated for compliance with the O&M plan or conducted in accordance with any work plan approved or modified by U.S. EPA with MDEQ concurrence. All excavation, drilling, penetration or other disturbance of the surface or subsurface soils on the Property must be conducted in accordance with a health and safety plan that complies with the Occupational Safety and Health Act of 1970, 20 C.F.R. 1910.120 and the Michigan Occupational Safety and Health Act.

(b) Any construction of buildings on the Property unless plans are submitted to and approved by the MDEQ and U.S. EPA. Any new construction must satisfy the indoor air inhalation criteria of Part 201.

4. Owners Subsequent to Plainwell shall prohibit activities, and Plainwell shall not perform any activities, on the Property that may interfere with any element of the ROD, including the performance of operation and maintenance activities, monitoring, or other measures necessary to ensure the effectiveness and integrity of the remedy.

5. The MDEQ or U.S. EPA may require modifications to the restrictions contained in this Declaration of Restrictive Covenants and Environmental Protection Easement as necessary to assure the integrity and effectiveness of the remedial action required under the ROD or assure the protection of the public health, safety, welfare and the environment.

6. Owners Subsequent to Plainwell shall comply with the applicable requirements of Section 20107a of the NREPA and Part 10 of the Part 201 Administrative Rules.

7. Permanent Markers. The Owner shall not remove, cover, obscure, or otherwise alter or interfere with the permanent markers placed on the Property pursuant to the ROD. Owners Subsequent to Plainwell shall keep vegetation and other materials clear of the permanent markers to assure that the markers are readily visible.

8. Contaminated Soil Management. Owners Subsequent to Plainwell shall manage all soils, media and/or debris located on the Property in accordance with, and Plainwell shall refrain from managing soils, media and/or debris located on the Property in contravention of the applicable requirements of Section 20120c of the NREPA; Part 111, Hazardous Waste Management, of the NREPA; Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the administrative rules promulgated thereunder, and all other relevant state and federal laws.

Environmental Protection Easement

9. Access. Grantor grants to Grantee, and its assigns, and to the United States of America, and its



assigns, a Third Party Beneficiary, an irrevocable and continuing right of access at all reasonable times to the Mill Property for the purposes of:

- (a) Overseeing and/or implementing the remedial action required in the ROD, including but not limited to installation of a landfill cover system that complies with the relevant portions of Part 201 of the NREPA and conducting any necessary inspection and repair of the capped areas;
- (b) Verifying any data or information submitted to U.S. EPA and/or MDEQ and determining and monitoring compliance with the ROD and any implementing Statement of Work;
- (c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
- (d) Monitoring Response Activities at the 12th St. Operable Unit and at the Site and conducting investigations relating to contamination on or near the Site, including, without limitations, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;
- (e) Conducting periodic reviews of the Response Activities at the Property and at the Site, including but not limited to, reviews required by applicable statutes and/or regulations; and
- (f) Implementing additional or new Response Activities if U.S. EPA and the MDEQ determine:
 - i) that such activities are necessary to protect public health, safety, welfare, or the environment because either the remedial action has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the remedial action in a significantly more efficient or cost effective manner; and
 - ii) that the additional or new Response Activities will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.

Nothing in this instrument shall limit or otherwise affect U.S. EPA's or MDEQ's right of entry and access or authorities to take Response Activities as defined in this instrument, as well as in Section 20101(1)(ee) of Part 201 of the NREPA, under CERCLA, the National Contingency Plan, **the National Contingency Plan, 40 C.F.R. Part 300**, the NREPA, and any successor statutory provisions, or other state or federal law.

10. Transfer of Interest. The Owner shall provide notice to the U.S. EPA and MDEQ of the Owner's intent to transfer any interest in the Property at least fourteen (14) business days prior to consummating the conveyance. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner unless the Owner complies with the applicable provisions of Section 20116 of the NREPA. A copy of this Declaration of Restrictive Covenants and Environmental Protection Easement shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and



transferees by the person transferring the interest. The Owner shall include in any instrument conveying any interest in the Property or portion thereafter including but, not limited to, deeds, leases, and mortgages a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO A DECLARATION OF RESTRICTIVE COVENANTS AND ENVIRONMENTAL PROTECTION EASEMENT, DATED _____, 200_, AND RECORDED WITH THE ALLEGAN COUNTY REGISTER OF DEEDS, LIBER _____, PAGE _____

11. Notices. Any notice, demand, request, consent, approval, or communication that is required to be made or obtained under this Declaration of Restrictive Covenants and Environmental Protection Easement shall be made in writing and include a statement that the notice is being made pursuant to the requirements of this Declaration of Restrictive Covenants and Environmental Protection Easement, MDEQ Reference Number RC-RRD-03-052 and U.S. EPA Site No. 059B, and shall be served either personally or sent via first class mail, postage prepaid, as follows:

For U.S. EPA:

Director
Superfund Division
U.S. EPA
77 West Jackson Blvd. SR-6J
Chicago, Illinois 60604

with a copy to:

Eileen L. Furey.
Associate Regional Counsel
U.S. EPA Region 5
77 West Jackson Blvd. C-14J
Chicago, IL 60604

For MDEQ:

Director
Michigan Department of Environmental Quality
P.O. Box 30473
Lansing, Michigan 48909-7973

with a copy to:

Suzanne D. Sonneborn
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General
525 W. Ottawa St.
Lansing, Michigan 48933

12. Term and Enforcement of Declaration of Restrictive Covenants and Environmental Protection Easement. This Declaration of Declaration of Restrictive Covenants and Environmental Protection Easements and Environmental Protection Easement shall run with the land and shall be binding on the



Grantor, its successors and assigns, including all lessees, easement holders, their assigns, and their authorized agents, employees, or persons acting under their direction and control. This Declaration of Restrictive Covenants and Environmental Protection Easements and Environmental Protection Easement may only be modified or rescinded with the written approval of the U.S. EPA and MDEQ.

The State of Michigan, through the MDEQ, the Owner, and the United States on behalf of U.S. EPA, as a Third Party Beneficiary, may enforce the restrictions set forth in this Declaration of Declaration of Restrictive Covenants and Environmental Protection Easements and Environmental Protection Easement by legal action in a court of competent jurisdiction.

13. Severability. If any provision of this instrument is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof and all sue.& other provisions shall continue unimpaired and in full force and effect.

14. Authority to Execute Declaration of Declaration of Restrictive Covenants and Environmental Protection Easements and Environmental Protection Easement. The undersigned person executing this instrument is the Owner and represents and certifies that he or she is duly authorized and has been empowered to execute and deliver this Declaration of Declaration of Restrictive Covenants and Environmental Protection Easements and Environmental Easement.

15. Nothing in this Declaration of Restrictive Covenants and Environmental Protection Easement affects Plainwell's obligations, if any, under Part 201 of the NREPA, CERCLA, or other State or federal laws, subject to the terms and limitations of the Environmental Settlement Agreement, dated as of October 29, 2003, as may be amended from time to time, among: (a) the United States of America, an behalf of the United States Environmental Protection Agency, the United States Department of the Interior, and the National Oceanic and Atmospheric Administration of the United States Department of Commerce, and including all departments, agencies and instrumentalities of the United States; (b) the State of Michigan, on behalf of Michael A. Cox, Attorney General for the State of Michigan, the Michigan Department of Environmental Quality, and all other departments, agencies and instrumentalities of the State of Michigan; (c) Colonial Heights Packaging, Inc.; (d) Philip Morris USA, Inc.; (e) Chesapeake Corporation; (f) Simpson Paper Company (g) Plainwell Holding Company; and (h) Plainwell Inc., the final version of which, after publication in the Federal Register for the thirty-day public comment period specified by 42 U.S.C. § 9622(i), will be filed with the United States District Court for the District of Delaware.

IN WITNESS WHEREOF, Plainwell Inc. has caused this Declaration of Restrictive Covenants and Environmental Protection Easement to be executed on this 16th day of March, 2005.

Plainwell Inc.

By: 

Name: Jeff Arnesen

Its: SVP - Chief Financial Officer



LIBER 2811

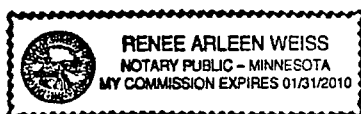
PAGE 591

**STATE OF MINNESOTA
COUNTY OF HENNEPIN**

Personally came before me this 16 day of March, 2005, the above-named Jeff Arnesen as Chief Financial Officer of Plainwell, Inc., to me known to be the person who executed the foregoing instrument and acknowledged the same.

Renee Arleen Weiss

Notary Public



Renee Arleen Weiss

[Print or type name]

Commissioned in County Hennepin

My Commission Expires:

Jan 31, 2010

**This instrument was prepared by
and after recording, should be returned to:**

**Pamela E. Barker
Godfrey & Kahn, S.C.
780 North Water Street
Milwaukee, WI 53202**



A2811 592 5

LIBER 2811

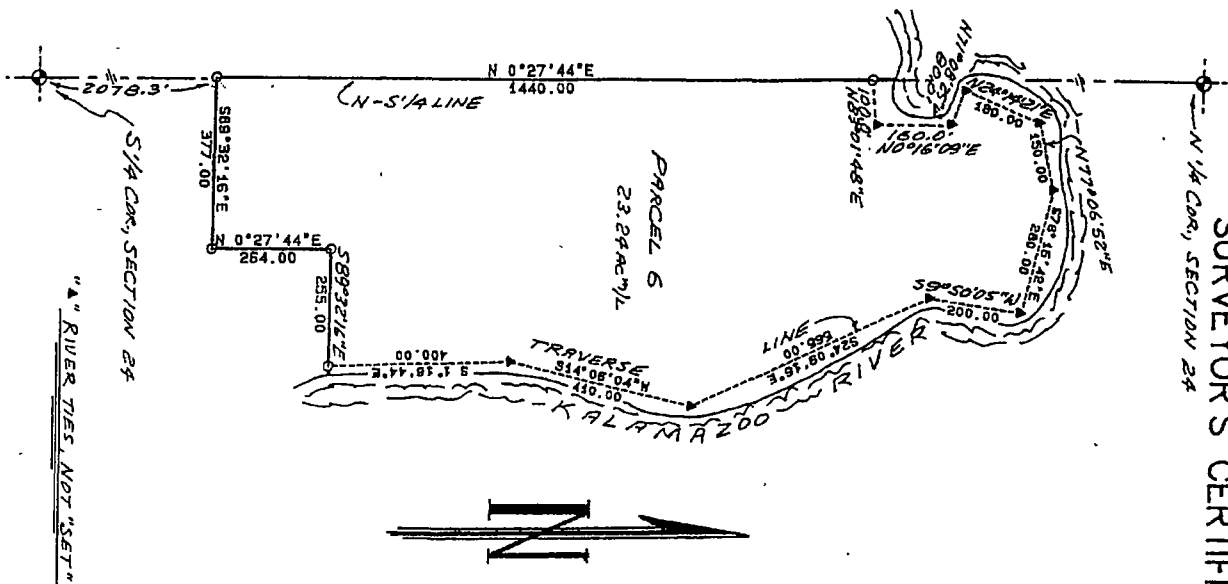
PAGE 592

EXHIBIT 1**LEGAL DESCRIPTION OF PROPERTY**

All that part of the east $\frac{1}{2}$, lying West and South of the Kalamazoo River and described as: Commencing at a point 2078.3 feet North of the South $\frac{1}{4}$ post of said Section, thence East 377 feet, thence North 264 feet, thence East 255 feet, to the low water mark of the Kalamazoo River, thence Northerly and Westerly along said low water mark of the Kalamazoo River to the North and South $\frac{1}{4}$ line of Section 24, thence South along said $\frac{1}{4}$ line to the point of beginning, Section 24, Town 1 North, Range 12 West. Together with an easement for ingress and egress running from subject property to Highway M-89 as set forth in deed recorded in Liber 487 on Page 112.



SURVEYOR'S CERTIFICATE



PARCEL 6

ALL THAT PART OF THE EAST 1/2, LYING WEST AND SOUTH OF THE KALAMAZOO RIVER AND WEST OF A LINE COMMENCING AT A POINT 2078.3 FEET NORTH OF THE SOUTH 1/4 POST OF SAID SECTION; THENCE EAST 377 FEET; THENCE NORTH 264 FEET; THENCE EAST 255 FEET, TO THE LOW WATER MARK OF THE KALAMAZOO RIVER THENCE NORTHERLY AND WESTERLY ALONG SAID LOW WATER MARK OF THE KALAMAZOO RIVER TO THE NORTH AND SOUTH 1/4 LINE OF SECTION 24; THENCE SOUTH ALONG SAID 1/4 LINE TO THE POINT OF BEGINNING. SECTION 24, TOWN 1 NORTH, RANGE 12 WEST.

LEGEND:

- - 1/2" IRON SET
- - CORNER FOUND
- R - "RECORDED AS"



BEARING SOURCE: PRIOR SURVEY PLS 8781

LOCATION: E 1/2 SECTION 24, T1N-R12W,
OTSEGO TWP., HELEGRAV CO., MICHIGAN,
 CERTIFIED TO: SIMPSON PLANNING PAPER CO.

I HEREBY CERTIFY THAT I HAVE SURVEYED AND MAPPED THE LAND ABOVE PLATTED AND/OR DESCRIBED ON THIS DATE, AND THAT THE RATIO OF CLOSURE ON THE UNADJUSTED FIELD OBSERVATIONS WAS 1/2000, AND THAT ALL OF THE REQUIREMENTS OF P.A. 132, 1970 HAVE BEEN COMPLIED WITH.



WIGHTMAN MOORED, INC.

Land Surveying and Consulting Engineering
 114 CHESTNUT ST., ALTOON, MI 48810
 (510) 673-8485 FAX 673-8484

BY: Bern M. Jones DATE: 10-18-96
 BERN M. JONES, PLS M# 23514 DISK# 50 "8630646"